IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.07.2019
CORAM
THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.32329 of 2013
MP.No.1 & 2 of 2013

N.Sakthivel
Proprietor of M/s.Sri Amman Timber Depot,
represented by its Legal Representative
S.Jothi .. Petitioner

--Vs--

The Assistant Commissioner (CT)
Erode (Rural) Circle,
Erode ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the impugned proceedings of the respondent in TIN 33442902332/07-08 dated 18.10.2013, quash the same as illegal and violative of the provisions of the TNVAT Act, 2006.

For Petitioner : Mr.S.Rajasekar
For Respondents : Mr.V.Haribabu,
Additional Government Pleader

O R D E R

The grounds raised in the present writ petition are predominantly similar to the grounds raised in W.P.No.31844 of 2013, wherein the petitioner has challenged the assessment order for the assessment year 2008-09 and this Court by order dated 08.01.2018, has observed as follows:

> 2. The petitioner is before this Court, challenging the assessment order passed by the respondent dated 18.10.2013. Earlier the petitioner had approached this Court praying for a direction upon the respondent to furnish certain details to enable the petitioner to submit objections to the allegation made against the petitioner that during the relevant assessment year 2008-2009, they had effected import of timber and cleared the same without payment of tax. The writ petition in W.P.No.15986 of 2013 was disposed of by an order dated 27.06.2013 by directing the respondent to consider the petitioner's representation dated 02.04.2013, wherein the petitioner had requested copies of several documents. On receipt of the directions, the respondent enclosed the information

received by them from the Deputy Accountant General/S.R.A dated 19.04.2012, which contains an annexure. The annexure shows that the import transactions done by the petitioner from 2007 onwards. According to the petitioner except for the transaction in 2008-2009, all other transactions have been duly accounted for and taxes have been paid are unable to trace the records. Even that one moth time lapsed on 26.09.2013 and the petitioner did not filed any objections and hence, proceeded to complete the assessment.

3.The learned counsel for the petitioner would submit that since revision of assessment is under Section 22(4) of the Act, even though the petitioner has not submitted their objections an opportunity of personal hearing ought to have been provided. In this regard, reliance was placed on the decision reported in the case of M/s.Rajam Offset Printers vs. The Commercial Tax Officer reported in 1995 (8) MTCR 55 and to enable the petitioner to have the benefit of the decision in the case of M/s.Rajam Offset Printers, the conduct of the petitioner has to be considered. When, the respondent issued notice dated 28.02.2013, the petitioner made a representation dated 02.04.2013, requesting for 15 documents/details. Complaining that the said representation has not been considered, the petitioner approached this Court and filed a writ petition to direct the respondents to consider the representation giving all the documents/details. The Court did not issued any positive direction but directed the representation to be disposed of on merits. Pursuant thereto, the respondent has given the details along with notice dated 08.08.2013. On perusal of the said letter along with the enclosures, it is seen that the petitioner has been a regular importer of timber from abroad. Therefore, the petitioner would state that they have not done any transaction during 2008-2009 and the onus lies on the petitioner to prove the same and the respondent cannot be directed to prove the negative. Inspite of the petitioner having not submitted their objections in time, the respondent granted further time and waited for nearly seven months and inspite of the same, the petitioner did not bother to respond to the notice nor submitted any objections. Since the petitioner failed to prove the genuineness of the stand taken by them, the respondent has completed the assessment and passed the impugned order. The respondent cannot be blamed for having completed the assessment in the manner done.

4.Thus, considering the conduct of the petitioner in dragging the matter without offering proper explanation, I am of the view that the instant case is not a case where there is violation of principles of natural justice or violation of provisions under Section 22(4) of the Act, but it is the case where the petitioner filed to avail the opportunity granted to them. Therefore, on facts the decision in the case of M/s.Rajam Offset Printers cannot be made applicable to the case on hand. However, considering the plea raised by the petitioner stating that her husband N.Sakthivel, who was the Proprietor of the petitioner Company is suffering ailments and unable to even submit objections, this Court is inclined to grant of one opportunity to the petitioner to submit all records in support of their stand that no import transactions were effected by them. The learned counsel for the petitioner submitted that the details given by the respondent along with the notice dated 08.08.2013 is insufficient. I do not agree with the said submission that the details is in the tabulated form which gives the bill of entry number, date of bill of entry, type, pan number, importers name and address, city of import, type of timber imported, assessable value, the duty paid thereon, name of the supplier and the port of loading. Thus, all relevant details were available in the annexure. Therefore, the petitioner should submit a proper reply duly supported by records. However, only one opportunity will be given to the petitioner, failing which, the respondent can proceed to recover the tax as quantified in the impugned order.

5.Accordingly, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as show cause notice and submit a full fledged reply along with supportive documents within a period of thirty days from the date of receipt of a copy of this order. If the petitioner fails to comply with the direction, then the respondent is entitled to proceed further pursuant to the impugned order. If, on the other hand, the petitioner complies with the direction and submitted objections along with required documents, the respondent shall consider the same on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

2. This writ petition is against the assessment order for the assessment year 2007-08. When it is stated that the grounds raised for the assessment year 2008-09 in W.P.No. 31844 of 2013 as well as in the present case are one of the same, it would not be appropriate to take a different view rather to give an opportunity to the petitioner to raise his objections during the assessment proceedings, when it is remanded back.

3. In consonance with the observations made by this Court in WP.No.31844 of 2013, the present writ petition is disposed of, directing the petitioner to treat the impugned proceedings as show cause notice and submit a full fledges reply along with supportive documents within a period of thirty days from the date of receipt of a copy of this order. If the petitioner fails to comply with the direction, then the respondent is entitled to proceed further pursuant to the impugned order. If, on the other hand, the petitioner complies with the direction and submits objections along with required documents, the respondent shall consider the same on merits and in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT)
Erode (Rural) Circle,
Erode

+1 cc to M/s.R.Hemalatha,Advocate Sr.No. 64004

+1 cc to The Special Government Pleader, SR.No.64266

AKM/06.09.19/4P-4C /

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